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May 9, 1997

The Honorable John D. Dingell, Ranking Member  
Commerce Committee Democratic Office  
564 Ford House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Dingell:

I appreciate the opportunity to respond to your letter regarding utility deregulation and electricity industry restructuring. ComEd supports deregulation and believes that, if done right, it will provide the opportunity for lower prices and improved service for all consumers. We advocate a deliberate dual track approach with the federal and state governments exercising their respective jurisdictions to remove barriers to consumer choice. We believe that an economically efficient market can only be achieved when the federal government provides a "level playing field" and states enable consumers to obtain access to suppliers.

By way of background, Commonwealth Edison is the electric utility that serves the northern fifth of Illinois, including Chicago. The Company serves 3.41 million customers throughout a service territory that includes about 70% of the state's population. ComEd has 16,835 employees. Over half of the company's 22,513 megawatts of installed capacity is nuclear powered, more than any other utility.

The following are brief and precise responses to your questions:

- 1. From your company's point of view, is it necessary for Congress to enact legislation bearing on retail competition, and why? If you favor legislation, please**

**outline which issues should be addressed and how you think they should be resolved.**

While state legislatures should take the lead in crafting deregulation plans that best meet the needs of their constituents, there is a clear role for Congress in removing barriers to market access. If competition between suppliers is to produce incentives for lower prices and improved service, the following federally imposed barriers to market access must be removed:

- The Public Utility Holding Company Act (PUHCA) must be repealed because it effectively restricts consumers from considering all suppliers' prices and services when making purchase decisions.
- The Public Utility Regulatory Policy Act (PURPA) must be repealed so that suppliers in regions where qualifying facilities are practical (i.e., regions where solar, wind, and cogeneration facilities have been demonstrated as feasible) are not paying to meet these "social values" when other suppliers are not.
- The Power Marketing Agencies (PMAs) must be sold to the highest bidder, ensuring that these giant marketers do not exercise unfair market power resulting from subsidization.

**2. If the state you serve has adopted or is considering adopting retail competition, what are your biggest concerns? Please be specific. Indicate how you are dealing with them and any recommendations you may have.**

About 80 individual negotiators representing virtually every stakeholder in Illinois are in the final stages of crafting a deregulation plan for Illinois that is expected to be enacted later this year. The plan is the result of almost three years of study and negotiations. Our most important concern throughout the negotiations has been the recovery of transition costs. Although it is too early to speculate what will be the ultimate solution, many parties have agreed on a five year transition period that would provide some consumers with opportunities for experimentation and others with

guaranteed rate decreases. ComEd is a company that installed nuclear plants after substantial scrutiny by regulatory agencies and then suffered disallowances when the time came to include these investments in the rate base. The Company believes that investors are entitled to total recovery of legitimate, verifiable transition costs.

**3. Whether or not you favor federal legislation, please indicate your position on the following specific issues (to the extent not addressed in your prior response):**

- a) *A Federal mandate requiring states to adopt retail competition by a date certain.* If retail competition is under consideration in the state you serve, do you believe Congress should provide direction or authority?

There is no need for the federal government to address the retail wheeling issue. We believe that consumers will continue to provide the incentive for state governments to allow access to increasingly higher value electric service. As stated above, the federal government should focus on "leveling the playing field" by removing barriers to fair competition.

- b) *Recovery of stranded investment.* If the state you serve has adopted retail competition, how was this issue addressed and are you satisfied with the outcome? If your state is considering adopting retail competition, how would you recommend that this issue be treated? Do you think Congress should enact legislation relating to stranded cost issues, and if so what would you recommend? Is securitization a useful mechanism for dealing with stranded costs, and whom does it benefit?

A coalition consisting of many diverse Illinois stakeholders, including consumer groups, ComEd, and other utilities providing virtually all of the state's electricity, has agreed on a consensus approach to stranded cost recovery. We anticipate that it, or a similar plan, will be enacted. In brief, the Coalition's plan includes a five year

transition period during which all consumers choosing to remain with their native utility will receive a substantial rate decrease over the period. Consumers who choose to leave their system may pay a competitive transition charge (CTC) under the Coalition's proposal. ComEd will have the responsibility to mitigate liability through improved efficiencies and the development of new products and services. While details of the plan are still being negotiated, requiring utility customers who choose to seek alternative suppliers to pay transition costs is, in our view, the fairest way to pay for legitimate stranded costs.

ComEd is a strong supporter of transitional financial instruments and views this mechanism as an equitable way to minimize potentially severe financial consequences to utilities and to provide overall lower rates to utility customers. Transitional financial instruments similar to those facilitated by California and Pennsylvania deregulation legislation would be an important tool for mitigating the effects of deregulation.

- c) **Reciprocity.** Can states condition access to their retail markets on the adoption of retail competition by other states? Should Congress enact such a requirement? Could such a requirement create an incentive for states with low electric rates not to adopt retail competition, in order to keep cheap power at home?

ComEd believes that while it is an important element of deregulation, reciprocity poses serious legal considerations. Although we have confidence that electricity consumers in every state will seek opportunities in other states and eventually demand that their elected officials institute deregulation, there is a serious question whether a reciprocity requirement is within either the state or federal government's authority. This is a legal question that should be the subject of discussion by lawyers exploring deregulation.

4. If Congress enacts comprehensive restructuring legislation, should it mandate "unbundling" of local distribution company services? What effects would this have, and would they differ for various customer classes? Would this entail substantial expense, and who would incur any such costs?

Corporate structure should be left to market forces. Both state and federal legislation should allow utilities and non-utilities to make decisions based on meeting consumer needs. Unbundling retail services could result in substantial additional costs that would eventually be paid by consumers.

5. Recently Chair Moler of the Federal Energy Regulatory Commission recommended that as a part of comprehensive legislation, Congress authorize the Commission to enforce compliance with North American Reliability Council standards to help maintain reliable service. Do you believe this is necessary, and why or why not?

We agree with Chair Moler that NERC standards must be enforced, and FERC is the most logical agency to do so. Although we expect the mechanisms of the ISO to resolve many of the disputes relating to system reliability, the "hammer" of the FERC would induce a discipline which could be used if ISO negotiations failed.

6. What concerns does your company have with respect to the role of public power and federal power marketing agencies in an increasingly competitive wholesale electric market? In markets in which retail competition has been adopted? Are there concerns you would like to have addressed if Congress enacts comprehensive restructuring legislation? Should Congress consider changes to federal law as it applies to regulation of public or federal power's transmission obligations?

The most important contribution the federal government can make to deregulation is a level playing field. Subsidized power may have served public policy goals during the early years of the electric power business, but it is presently an anachronism. We believe that consumers of the large public power systems will see the

broad range of new opportunities that competition will present and eventually demand to be released as public power customers. In anticipation of this, Congress should enact, as a part of comprehensive legislation, rules that condition acceptance of federal and state subsidies on not competing for the customers of those companies who don't receive this benefit. This "fence" should continue until the time subsidies are discontinued.

For all networked transmission, FERC must have jurisdiction just as if the transmission owner was a private party.

**7. If Congress enacts comprehensive restructuring legislation, should changes be made to federal, state, or local tax codes, and if so, why? Please be specific.**

ComEd believes that, from a taxation perspective, deregulation should be transparent to taxpayers and taxing bodies. From the taxpayers' perspective, tax burdens should not be more or less. From a taxing body's perspective, revenues should remain neutral. Similarly, utilities and competitors alike should carry comparable tax burdens. To ensure this continuity of treatment, nuclear decommissioning funds must receive the same tax treatment when the "cost of service" component becomes undefined after deregulation. Market-based pricing will eliminate one of the criteria used to compute the amount due decommissioning funds. Also, legislation is required to ensure that federal income tax is not paid on contributions to funds until the decommissioning expense is incurred.

**8. What, if any, concerns do you have about the reliability of the electric systems? If the industry moved to retail competition, will adequate reserves be available? Is the transmission system capable of handling full retail competition?**

Service reliability will be of increased concern after deregulation. A proliferation of new suppliers, customer-based energy management options, and supply-side options for meeting consumer needs will create new

challenges for those managing system reliability. Some state based programs like supplier and marketer certification may help ensure reliability, but due to the interstate character of the transmission system, reliability is also a federal issue. Congress should adopt Chair Moler's recommendation that FERC be given the authority to enforce NERC standards and system reliability should be an issue of renewed focus.

### **The Future of Nuclear Energy**

Although not related to an inquiry in your letter, Congress should take specific steps to ensure that nuclear energy remains an option for the future. Nuclear energy presently accounts for over 20% of the Nation's electricity generation. Strengthening this contribution makes good sense for three reasons:

- **The Economy:** A well run nuclear plant in an environment of consistent regulation is competitive with other forms of generation and has the strong potential to lower consumers' energy costs.
- **The Environment:** Nuclear energy must be considered as the country's best hope for mitigating the possible effects of global climate change due to the burning of fossil fuels.
- **Fuel Diversity:** If our economy is to remain independent of disruptions due to world political instabilities, our domestic nuclear industry must remain vibrant.

And yet despite these clear benefits, the future of nuclear energy after industry restructuring is in jeopardy due to the uncertainties of regulation and the as yet unrealized fact that virtually all economic and social costs for nuclear energy are internalized. Stated briefly, if Congress is to achieve the goals of lower cost energy, a healthier environment, and energy security, basic policy changes must be made that contribute to regulatory predictability and promote the intrinsic values of nuclear energy.

Thank you for offering us the opportunity to share our views. We appreciate your recognition of the complexity of utility deregulation issues and the need to give careful consideration to legislating change.

Sincerely,

A handwritten signature in black ink, appearing to read "James J. O'Connor". The signature is fluid and cursive, with the first name "James" and last name "O'Connor" clearly distinguishable.

James J. O'Connor  
Chairman and Chief Executive Officer